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10                   **UNITED STATES DISTRICT COURT**  
11                   **SOUTHERN DISTRICT OF CALIFORNIA**

12  
13 ROBERT AND ROSANNA  
14 MANALANSAN,

15                   Plaintiff,

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17                   vs.

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23 MORTGAGE IT, INC., et al.,

24                   Defendants.

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26                   CASE NO. 10-CV-110W (RBB)

27                   **ORDER:**

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- (1) GRANTING UNOPPOSED MOTION TO DISMISS (Doc. No. 14)
  - (2) GRANTING UNOPPOSED MOTION TO STRIKE (Doc. No. 13)
  - (3) GRANTING UNOPPOSED MOTION TO DISMISS (Doc. No. 19)
  - (4) GRANTING UNOPPOSED MOTION TO DISMISS (Doc. No. 22)
  - (5) DENYING MOTION TO EXPUNGE LIS PENDENS (Doc. No. 20)

1       On March 17, 2010, Defendant MortgageIT, Inc. ("MortgageIT") moved to  
 2 dismiss and strike Plaintiffs Robert and Rosanna Manalansan's First Amended  
 3 Complaint ("FAC") pursuant to Federal Rule of Civil Procedure 12(b)(6) and 12(f). On  
 4 March 23, 2010, Defendants OneWest Bank ("OneWest") and Mortgage Electronic  
 5 Registration Systems, Inc. ("MERS") moved to dismiss Plaintiffs FAC pursuant to  
 6 12(b)(6) and moved to expunge an existing *lis pendens*. On March 24, 2010, Defendant  
 7 J.P. Morgan Chase Bank ("Chase") moved to dismiss Plaintiffs FAC pursuant to  
 8 12(b)(6). Plaintiffs have not filed an opposition to any of the pending motions.

9       The Court decides the matter on the papers submitted and without oral  
 10 argument. See S.D. Cal. Civ. R. 7.1(d.1) And for the reasons stated below, the Court  
 11 **GRANTS** Defendants' motions to dismiss and strike. (Doc. No. 13, 14, 19, 22.) The  
 12 Court also **DENIES** the motion to expunge the *lis pendens*. (Doc. No. 20.)

14 **I. BACKGROUND**

15       Plaintiffs are the current title holder of a single family residence located at 646  
 16 Carefree Drive, San Diego, California 92114. (the "Property") Defendants are a  
 17 collection of financial institutions that have been, or are currently, involved with the  
 18 mortgage on the Property.

19       On or about November 1, 2005, Plaintiffs refinanced their second mortgage on  
 20 the Property by obtaining a new second mortgage from Chase. (Doc. No. 1 at ¶ 10.) On  
 21 December 12, 2006, Plaintiffs refinanced their original mortgage by obtaining a new first  
 22 mortgage from MortgageIT. (Doc. No. 1 at ¶ 11.) In mid 2009, Plaintiffs began having  
 23 difficulty making payments on both of their mortgages, and on October 21, 2009,  
 24 Defendants recorded a "Notice of Default" on the Property. (Doc. No. 1 at ¶ 25.)

25       On January 1, 2010, Plaintiffs, proceeding pro se, filed the current lawsuit. On  
 26 March 10, 2010, Plaintiffs filed their First Amended Complaint asserting thirteen claims  
 27 against the Defendants, including (1) Fraudulent Misrepresentation; (2) Breach of  
 28 Fiduciary Duty; (3) Breach of Covenant of Good Faith and Fair Dealing; (4)

1 Declaratory Relief; (5) Quiet Title; (6) Violation of California Financial Code § 4970;  
 2 (7) Negligence; (8) Accounting; (9) Violation of the Truth in Lending Act (TILA), 15  
 3 U.S.C. § 1601; (10) Violation of the Real Estate Settlement Procedures Act (RESPA),  
 4 12 U.S.C. § 2601; (11) Violation of Fair Credit Reporting Act (FCRA), 15 U.S.C. §  
 5 1681; (12) Violation of California Business and Professions Code § 17200; and (13)  
 6 Violation of Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692.

7 On March 17, 2010, MortgageIT moved to dismiss and strike the FAC. On  
 8 March 23, 2010, OneWest and MERS moved to dismiss the FAC and also moved to  
 9 expunge the *lis pendens*. On March 24, 2010, Chase also moved to dismiss the FAC.  
 10 Plaintiff's oppositions to all of Defendants' motions were due June 7, 2010. See S.D. Cal.  
 11 Civ. R. 7.1(e.2) On June 10, 2010, MortgageIT filed their Reply, which noted Plaintiffs'  
 12 failure to oppose. (Doc. No. 24.) To date, Plaintiffs have not filed an opposition to any  
 13 of the pending motions.

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15 **II.     LEGAL STANDARD**

16 Rule 12(b)(6) allows a court to dismiss a complaint upon a finding that the  
 17 plaintiff has failed to state a claim upon which relief may be granted. FED. R. CIV. P.  
 18 12(b)(6). A 12(b)(6) motion tests a complaint's legal sufficiency. See Navarro v. Block,  
 19 250 F.3d 729, 732 (9th Cir. 2001). Thus, dismissal is proper only where the plaintiff's  
 20 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal  
 21 theory. See id. “[I]f as a matter of law ‘it is clear that no relief could be granted under  
 22 any set of facts that could be proved consistent with the allegations,’ a claim must be  
 23 dismissed . . . whether it is based on an outlandish legal theory or a close but ultimately  
 24 unavailing one.” Neitzke v. Williams, 490 U.S. 319, 326-27 (1989) (citations omitted).  
 25 Thus, a court should not dismiss a complaint “unless it appears beyond doubt that  
 26 plaintiff can prove no set of facts in support of his claim which would entitle him to  
 27 relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Parks Sch. of Bus., Inc.  
 28 v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Finally, a court must accept the

1 complaint's allegations as true and construe the complaint in the light most favorable  
 2 to the plaintiff. See Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 338 (9th Cir. 1996).

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4 **III. DISCUSSION**

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6 **A. The Motions to Dismiss and the Motion to Strike**

7 The Court grants Defendants' motions based upon Plaintiffs' failure to file an  
 8 opposition as required by Civil Local Rule 7.1. The Ninth Circuit has held that  
 9 pursuant to a local rule a district court may properly grant a motion to dismiss for failure  
 10 to respond. See generally Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.1995) (affirming  
 11 dismissal for failure to file timely opposition papers where plaintiff had notice of the  
 12 motion and ample time to respond); accord Martinez v. Stanford, 323 F.3d 1178, 1183  
 13 (9th Cir. 2003) (affirming Ghazali's applicability to Rule 12(b) motions).

14 Moreover, Civil Local Rule 7.1(f.3.c) expressly provides that “[i]f an opposing  
 15 party fails to file papers in the manner required by Local Rule 7.1(e)(2), that failure may  
 16 constitute a consent to the granting of that motion or other ruling by the court.” Here,  
 17 Plaintiffs has failed to oppose or to request an extension of time in which to do so.  
 18 Relying on Civil Local Rule 7.1(f.3.c), the Court interprets Plaintiffs' failure to oppose  
 19 Defendants' motion to dismiss as a consent to its merits.

20 As mentioned above, Plaintiffs have already amended their complaint once as a  
 21 matter of right. Plaintiffs have failed to oppose Defendants' motions filed in response  
 22 to their First Amended Complaint, nor have they requested any additional time in  
 23 which to do so. Because Plaintiffs have previously exercised their right to amend, and  
 24 by failing to respond have failed to argue for further leave to amend, the Court does not  
 25 find grounds on which to grant the Plaintiffs an opportunity to file a Second Amended  
 26 Complaint.

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1        Accordingly, the Court **GRANTS** Defendants' motions to dismiss and motion  
2 to strike **WITH PREJUDICE** and **WITHOUT LEAVE TO AMEND**. This Order  
3 dismisses all of the remaining Defendants and closes this case in its entirety.<sup>1</sup>

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5        B. **The Motions to Expunge and Request for Attorney's Fees**

6        Defendants OneWest and MERS have moved to expunge a *lis pendens*, but have  
7 not provided a copy of the Notice of Pendency nor have they provided its document  
8 number. Therefore, based on the insufficiency of their pleadings, the Court **DENIES**  
9 their motion **WITHOUT PREJUDICE**.

10       In light of the foregoing, the request for attorney's fees associated with the  
11 expungement is also **DENIED**. Should OneWest and MERS decide to amend and re-  
12 file their request, they may do so on an *ex parte* basis.

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14       IV. **CONCLUSION**

15       In light of the foregoing, the Court:

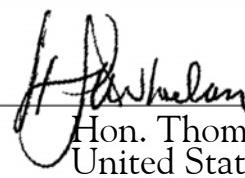
- 16       1. **GRANTS** all of the unopposed motions to dismiss **WITH PREJUDICE** and  
17 **WITHOUT LEAVE TO AMEND**. (Doc Nos. 14, 19, 22.)
- 18       2. **GRANTS** the unopposed motion to strike. (Doc. No. 13.)
- 19       3. **DENIES** the motion to Expunge Notice of Pendency of Action **WITHOUT**  
20 **PREJUDICE**. (Doc. No. 20.)

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IT IS SO ORDERED

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23       DATED: July 2, 2010

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Hon. Thomas J. Whelan  
United States District Judge

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28       <sup>1</sup> Defendant Quality Loan Service Corporation was previously excused from  
participating in this lawsuit after filing an unopposed Declaration of Nonmonetary  
Status. (See Doc. No. 4.)